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ABSTRACT

The events associated with the demise of a software firm (AXXESS, Inc.), which supplied a software package to higher education institutions are reviewed. Attention is directed to what was learned that might be of assistance to other colleges using or considering third party software. Some of the topics include: particular crises, legal ramifications and differences in institutional interpretation, reactions by the institutions to the situation, the effect of the various events on college operations, the role of third parties, and the interests of other hardware and software vendors. Some important considerations include: contents of contracts and the existence of multiple versions of software, software escrow and user responsibility for acquiring current versions of software, documentation and training, developing a communications network, the impact of court deliberations on college operations, liability for prior licensing agreements, and the realities of exchanging and developing software. Issues for institutions include: the need to research the viability of the vendor, the necessity to negotiate a secure contract, determining the status of the system documentation, the need to assess the status of the system documentation and the ability of technical writers who are not familiar with the system to provide documentation, and the need to evaluate the composition and source of the software and tools used to create the system. (Author/SW)

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IS THERE LIFE AFTER DEATH OF YOUR SOFTWARE VENDOR?

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ABSTRACT

How does an institution recover from the shock of losing its Information System vendor? Should there be a period of mourning before a decision is made to "go it alone" or seek a new partner? What about the children (users) who have grown dependent upon both partners; how does one prepare them for the changes which are certain to occur? Institutions which have built their Management Information Systems around turnkey packages should be prepared for possible changes in the client/vendor relationship. The vendor could literally go out of business or the vendor could be acquired. Changes in vendor management will affect your institution. Do you have to lose control when you acquire a turnkey package? What legal advice should you seek and when?

The presentation will chronicle the events associated with the demise of a software firm (AXXESS, Inc.) which supplied a software package to institutions of higher education. Some of the topics addressed include:

1. What crises presented themselves?
2. What were the legal ramifications? Were there differences in institutional interpretation?
3. How did the various institutions react to the situation; individually and as a group?
4. How did the various events impact college operations?
5. What was the role of third parties?
6. What were the interests of other hardware and software vendors?
7. What was learned that might be of some assistance to other institutions who are currently utilizing third party software or are contemplating acquiring such software?

Some important considerations include:

a. contents of contracts and the existence of multiple versions,
b. software escrow and user responsibility for acquiring current versions of software,
c. documentation and training,
d. developing a communications network (oral and written),
e. the impact of court deliberations on college operations at different points of time,
f. liability for prior licensing agreements, and
g. the realities of exchanging and developing software.

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Paper presented at the
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"I hate to be the bearer of bad news, but have you heard that AXXESS Information Systems has closed its doors?" These words shocked MIS Directors at twenty-nine institutions on or about April 28, 1983. Some received word from other users, some heard the news from software vendors who competed with AXXESS, none heard from AXXESS. A few received word through the grapevine from AXXESS employees. Over the next several days varying degrees of panic began to set in. A few institutions had installed all of the AIMS software package; most were in various stages of installation ranging from receipt of tapes to several modules in place. AXXESS had contracts with the institutions to provide software, installation, user and administrative training and, in most institutions, the hardware and operating system. The "womb to tomb" turnkey package philosophy had been bought into by these institutions and now they faced a different "tomb."

The death or demise of a software vendor brings no small amount of anxiety into the heart of an institution which has decided to control its flow of information with a turnkey package. Most institutions decided to go with a turnkey package for similar reasons. Some common considerations include:

1. An ability to achieve performance in a timely and cost efficient manner.

2. The sharing of overhead with other similar institutions in designing, building and maintaining a software package.

3. An ability to meet 90% of the information needs for much less cost than would be required to "do it alone." (Some refer to this concept as the "90/10 Rule," 90% of need for 10% cost.)

4. The ability to achieve superior design by utilizing the services of many professionals who have done the analysis and design based on the functional needs of an institution, not on the political and personnel whims of the institution.

5. The sharing of future enhancements of the package with other institutions. (Enhancements may include those changes which are required by changes in laws, regulations or changes in the hardware or operating system.)

6. An ability to share ideas and training with other users. (Usually this takes the form of a strong user group.)

The users of the AIMS package (AIMS is the name of the turnkey package sold by AXXESS) had formed a user group and had already held several meetings prior to the demise of AXXESS. This group (AUG) moved quickly to comfort and inform users. A meeting was called for users to gather at Bank Street College in New York City on May 3 & 4, 1983. The purpose of this meeting was to pool information and ideas.

The Bank Street meeting began with fears and concerns being expressed. Representatives from the institutions had many "hidden agendas" that they wished to pursue. As the meeting moved forward, these items of concern came to the table of discussion. The following list characterizes those concerns voiced at the meeting:

Legal Concerns

1. What really is the status of AXXESS; has bankruptcy been filed; if so, under which chapter of the regulations?

2. What is the legal status of AIMS; who owns it?

3. Who are the principle characters from the bank, investors, owners?

4. What are the user implications? What do we owe, to whom? Can we continue to use the software; did we really buy a perpetual license?

5. Who owns the client unique modifications, the institution or AXXESS?

6. Can we share information about the software with each other?

Software Concerns

1. What bugs are common to all users (current and future)?

2. What client unique modifications exist?

3. What is the current status of AIMS Revision 2.1, 3.0?

4. What is the current status of AIMS and its ability to run on the most current revision of the operating system?

5. What is the status of future product design proposals?

After many hours of conversation (in some cases simply the venting of feelings), the following outcomes were established:

1. The users' group, AUG, would organize more formally with the following officers elected:

   President: John Sutton, St. Norbert's College
   Vice President: Carol Lennox, Mills College
   Secretary: Michael Zastrocky, Regis College
   Treasurer: Charles Jackson, Hampshire College

The officers were also organized as an executive committee to make short-term decisions for the group and to communicate information to all users.

2. A pool of money would be established from an emergency dues supplement to hire legal counsel and a technical consultant.

3. Support alternatives ranging from groups of ex-AXXESS employees, to the users' group to other vendors were listed and assigned to members for possible consideration.

4. A meeting was set for June 24-26 at Mills College.

It is important to note that twenty-four institutions sent forty-two people to the Bank Street meeting.

The Executive Committee received emergency funds (the additional dues) from the following institutions:

Rice University
Hampshire College
Bates College
Skidmore College
Drew University
LaRoche College
Bank Street College
Bentley College
University of St. Thomas
Davidson College
Morehead State University
Gettysburg College
Morningside College
Swarthmore College
Wellesley College
St. Norbert's College
The Art Institute of Chicago
Columbia College
Connecticut College
Eckerd College
Mills College
Katherine Gibbs School
Regis College
College of Insurance
Hawaii Loa College
Bryn Mawr College
Adelphi University

Mr. James Higgins was hired as legal counsel and Mr. Peter Oliva was hired as a consultant to pull together information concerning resources available (or potentially available) to AUG. Mr. Higgins began immediately to assess the legal "what ifs." His background as legal counsel for Drew University in their contract negotiations with AXXESS allowed him the opportunity to begin with a high degree of background in the problem. Mr. Oliva was hired to assess what were the current strengths within the user group; who from member institutions could serve as resources to other institutions. Mr. Oliva's background as MIS Director at Drew University, as well as his role in another users' group that experienced the demise of its vendor, brought much needed background to AUG.

During the next several months legal information began to surface. AXXESS had indeed been forced into chapter 7 of the bankruptcy code by former AXXESS employees' claims. Ownership issues began to filter through

and information from the user community revealed much strength and many possible opportunities for AUG.

The June 24-26 meeting at Mills College was very different from the Bank Street meeting. Confidence replaced fear and anger, creativity on potential solutions to the problems abounded. Legal counsel provided legal evaluation and replaced MIS Directors who at Bank Street had explored legal "what ifs." A true inventory of AUG was available and overall a tight organization existed and provided an interesting agenda. The following outcomes were achieved at this meeting:

1. Legal counsel provided an indepth assessment of what had happened and what legal implications existed.

2. Potential external support groups made formal presentations to the group.

3. A formal set of Bylaws was approved.

4. Workshops related to the Financial Aid, Fiscal and Student Records modules were held.

5. A game plan was outlined and approved.

6. The Executive Committee (officers) were appointed as temporary officers of a for-profit corporation to be formed in the event AUG decided to attempt to purchase the software.

7. Another meeting was set for fall, 1983.

During the next several months legal counsel and the Executive Committee met frequently via telephone links and in person to review proposals and explore the strategy of forming the for-profit corporation idea.

In July, 1983, Byytebaack, Inc. was formed as a for-profit corporation to attempt to purchase the software as the final asset from the bank. All AUG institutions were given the opportunity to purchase three shares of stock in Byytebaack, Inc. The following institutions chose to do so:

Adelphi University
Art Institute of Chicago
Bates College
Bentley College
Bryn Mawr College
College of Insurance
Connecticut College
Davidson College
Drew University
Eckerd College
Gettysburg College
Hampshire College
Hawaii Loa College
Katherine Gibbs School
Mills College
Morehead State University
Morningside College
Regis Educational Corp.
Rice University
St. Norbert College
Skidmore College
Swarthmore College
University of St. Thomas

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Gettysburg College
Hampshire College
Hawaii Loa College
Katherine Gibbs School
Mills College
Morehead State University
Morningside College
Regis Educational Corp.
Rice University
St. Norbert College
Skidmore College
Swarthmore College
University of St. Thomas

On August 22, 1983 Byytebaack successfully acquired the ownership of the AIMS package and other software previously owned by AXXESS. A shareholders' meeting was scheduled for September, 1983 in Chicago to elect a Board of Directors and Corporate Officers. A tentative agenda for the meeting was established by the interim board.

Following the election of the members of the board in Chicago, the shareholders meeting was adjourned in order that the board might have a meeting, elect officers, and proceed with the business at hand. The board was convened by Chairman John Sutton, the Director of Computer Services at St. Norbert College. Officers that were elected at that meeting were the President, Dr. Paul J. Plourde, Vice President for Information Services at Bentley College; the Vice President, Dr. Scott A. MacDonald, Executive Vice President at Drew University; the Secretary, Dr. Salvatore Ciolino, Associate Dean of Educational Services at Gettysburg College; and the Treasurer, Kenneth H. Smits, Controller at St. Norbert College.

The first item of business after reconvening the shareholders was to resolve any problems with the licensing agreement. The reason that this was required was the legal action brought by Microdata which was based on the fact that AXXESS had not paid Microdata the license fee for some of the AIMS users. The primary objective was to grant a blanket license to all shareholders to use and modify the software and documentation and to sell or exchange modifications made at a given institution with any other member of ByyteBaack. Other provisions of the licensing agreement were as follows:

1. Enter into cooperative efforts with other licensees to maintain, enhance or modify the software or documentation,

2. In the event of equipment malfunction, the software could be used on other equipment temporarily,

3. The right to copy for archival purposes,

4. Holds licensor harmless of use by licensee which causes ByyteBaack to pay a royalty to Microdata,

5. Disclaims any warranties on software or documentation, and

6. Specifies that neither the agreement, nor any of the rights hereunder, shall be assigned, sublet, conveyed, or transferred by licensee.

The next step was to identify the short to mid-term objectives that the company wished to accomplish and these were fodder for considerable discussion. What follows is a reasonable approximation of the objectives that we have focused on during the past four months:

1. Of utmost concern was to complete the acquisition of the software and to resolve any and all licensing problems with Microdata or other third parties.

2. It was crucial that we acquire the physical tapes and inventory the software.

3. Since one of the prime objectives of incorporating was for all shareholders to acquire the current version of the software, which was either under development or being distributed by AXXESS when they went bankrupt, we viewed the distribution of the software as crucial.

4. We wanted to create a central repository for the software on a system in order that we might evaluate the different versions that either had been released or were under development. The problem here is that there were different versions distributed to different users and we felt it was important for the future portability and exchangeability of software that we attempt to develop a common version.

5. To this end, we wanted to either contract for development of a new version of the software or develop a consortium of current users who would develop various modules.

6. We wanted to explore the possibility of passing the title to the software or develop a working relationship with a third party for development and/or marketing.

7. We felt that it was important to improve the documentation that existed and develop such things as installation guides that could be utilized by shareholders who wished to install some of the new versions of the software. It is important to note at this juncture that one of the provisions of the licensing agreement is that shareholders who had not contracted for specific modules with AXXESS had now acquired all modules by virtue of the licensing agreement. Thus, we expected a number of institutions to install modules that they heretofore had not utilized.

Following the Chicago meeting, we were wary of what could have been a natural letdown as one usually expects after attending a national meeting or conference such as this CAUSE conference, but such was not to be the case. Progress towards achieving our goals continued even though all of these efforts were being conducted by volunteer officers of the corporation. The one exception to this was the continuing relationship with the attorney who guided us through the incorporation and subsequent deliberations with a number of companies with whom we have either developed associations or were trying to resolve licensing agreements.

In order to maintain the momentum of the Chicago meeting, we decided to have the first official annual meeting of the corporation in Houston in November. We felt that this would give us a target to achieve our short-range objectives and provide an opportunity to reconvene and set some longer term objectives. The report to the shareholders at this meeting was quite encouraging since we did finalize the acquisition of the software and resolve the licensing agreement with Microdata which will terminate in April of 1985.

The revised licensing agreement was sent out and was signed by a number of schools. Most of the ones who had not yet returned the agreement

were available in the flesh to sign the agreement at the Houston meeting. The software in the form of some 32 tapes acquired from the trustee was transported from the bank to Drew University and subsequently to Bentley College. This allowed us to create what is now called the BYYTEBAACK system, and would provide a site for the developmental activities that were required as a next step.

At the same time, negotiations were taking place and an agreement was reached with The Watchung Software Group, Inc. This is a group of technical individuals who were former AXXESS employees who incorporated to provide support for AIMS users. Their first task was to inventory the software and identify which programs (1) did not compile, (b) had bugs in them, (c) had screen format errors, (d) had report problems, and (e) needed cosmetic change. We were also interested in the effort required to produce either a vanilla version of the software or an upgraded version which would include such items as the multiple semester capability, which was in the process of being developed at AXXESS.

A preliminary report of the findings of Watchung was presented to the board at Houston and the board decided to proceed to the next step, which was to contract with Watchung to resolve all difficulties with the software short of making the cosmetic changes, which would be addressed later. Subsequently, a contract was negotiated with Watchung to develop the vanilla version of the software for distribution to all licensees by April 1, 1984.

Negotiations were started with several firms (among them several Big-8 firms and a few software vendors) to ascertain the level of interest in either developing and marketing or simply marketing a version of this software. To date, those negotiations have been most fruitful and the board will convene in early 1984 to make a determination as regards which of the companies we wish to either work with or wish to be associated with.

Since one of our concerns was documentation, a number of initiatives were taken to improve the state of the current documentation. A project was started by Drew University to document the accounts payable system, and this was spearheaded by another former AXXESS employee, Dave Douglass. The resultant documentation was acquired by ByyteBaack for distribution to its shareholders. In addition, ByyteBaack acquired the rights to documentation that was also prepared by Dave Douglass when he offered seminars for AIMS users during the summer of 1983. This is currently being upgraded and will soon be distributed to licensees.

It is significant that during this entire period the level of cooperation and exchange of ideas, documentation and software amongst users of AIMS has increased beyond that which existed when AXXESS was still functioning as an organization. It is also notable that the users group survived as an organization, as well as ByyteBaack, and had its bi-yearly meeting in Houston in November, as well as the previous meeting in Oakland, and the next meeting has been scheduled for Florida in May of 1984.

This is not to suggest that the AIMS users have proceeded into the abyss without difficulty since a number of problems have continued to plague us. The most significant of these problems has been the continued legal hassles with the trustee since they have seen fit to bring legal action against all users of AIMS for the accounts that were receivable at the time of AXXESS' demise.

Another potential problem was acquiring support from knowledgeable individuals who either worked for AXXESS or had developed sufficient knowledge of the system to assist users. This has been partially resolved by the establishment of several small companies and the redirection of certain other companies who have been of some assistance to the users. Some of these firms include Archon Computer Solutions, The Computer Assistant Group, Information Solutions, and The Watchung Software Group.

Similarly, ByyteBaack has continued to have legal confrontations with companies who purport to market an AIMS lookalike system. This has been offset by the good fortune of having also acquired a number of financial and distribution oriented packages which industrial firms seem bent on acquiring. Thus, we proceed into the future recognizing full well that we will have to develop a corporate game-plan which, undoubtedly, will include hiring a full-time executive director to act as an intermediary between the shareholders and whichever company is licensed to develop and/or market the software.

From all of this, what should a college or university that is contemplating acquiring such software learn from the experience of the AIMS users?

First and foremost is the fact that this comedy of errors reinforces the need to thoroughly research the viability of the company that is providing the software. A point which surfaces and one which few of us were aware of is the necessity to ascertain what prior claims exist on the software. This is the equivalent of a title search.

A related legal issue is the necessity to negotiate an iron-clad contract. There were as many different contracts as there were colleges utilizing the system and, for the most part, none of these were satisfactory.

Of equal importance are the questions of the status of the documentation of the system and the ability of individuals (technical writers) who are not familiar with the system to document the system. A corollary to this question is whether the documentation and the software is stored in escrow by the vendor by people who have acquired licenses in the event that the company should fail. The unavailability of a system flowchart that shows the interrelationships of the various modules and their corresponding files continues to plague the users of AIMS. Although we are currently making progress to resolving the issue, the availability of a system made to facilitate user comprehension should be central to any software evaluation.

Another technical and equally important question is the composition and source of the software and tools that were utilized to create the system.

There are a number of companies currently marketing software where they have modified the operating system or where they have used a hybrid language, and the latter was certainly the case with the AIMS system.

The cornerstone of the system relies on the use of Information which is a derivation of the Pick system and software, and this was previously supplied by dealers of Prime hardware. Of more import was the fact that Prime was not providing support for this set of tools and the system had been developed by a company called Devcom, Inc. Fortunately for the AIMS users, the Information system was acquired by Prime during 1982 from Devcom and the documentation and support for this system, which is the underlying structure of AIMS, is now a concern of Prime. This has helped immeasurably and has been a vital factor in the ability of the users to survive during this period.

As regards the application modules, it seems clear from our experience that the users have a responsibility to influence if not control the direction of the development of modules and the issuance of new releases. AXXESS modified the system at will and issued new releases without insuring that all users had copies. Furthermore, there were numerous different versions extant at any given time which will complicate the goal of getting current users converted to a vanilla version. From our perspective, this requires that people evaluating software examine the enhance procedure carefully, whether it is for a change approved by the users group or a change for an individual institution. The question is who and how will the many different versions of software be managed.

A final note is that this whole scenario stresses the importance of the users group. Even if one cannot get together to do legal battle against a company or a trustee, certainly there is merit in coming together to share ideas and cooperate, and it was good fortune that the users group was, indeed, functioning as well as it was when the death knell of AXXESS occurred.